

ORIGINAL'

BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

DEPT. OF TRANSPORTATION
1999

SEP 10 PM 4:40

In the Matter of)

PETITION FOR INTERPRETATION OF)
COMPUTER RESERVATIONS SYSTEM)
(CRS) REGULATIONS)

Docket No. OST-99-5888 - 5

In the Matter of)

COMPUTER RESERVATIONS SYSTEM)
(CRS) REGULATIONS)

Docket No. OST 97-2881 - 120

MOTION FOR LEAVE TO FILE AND RESPONSE OF GALILEO INTERNATIONAL, L.L.C.

ANTHONY C. SWANAGAN

Senior Vice President and
General Counsel

CATHY L. CUPP

Senior Counsel and Legal Director -
International

THOMAS J. DEMAY

Regulatory Affairs Counsel

Galileo International, L.L.C.

9700 West Higgins Road
Rosemont, Illinois 60018
847-5 18-4800

CAROLYN F. CORWIN

Covington & Burling

1201 Pennsylvania Avenue, N.W.

P. O. Box 7566

Washington, D.C. 20044

202-662-6000

Counsel for

Galileo International, L.L.C.

September 10, 1999

**BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.**

In the Matter of)	
)	
PETITION FOR INTERPRETATION OF COMPUTER RESERVATIONS SYSTEM (CRS) REGULATIONS)	Docket No. OST-99-5888
)	
)	
In the Matter of)	
)	
COMPUTER RESERVATIONS SYSTEM (CRS) REGULATIONS)	Docket No. OST 97-2881
)	
)	

**MOTION FOR LEAVE TO FILE AND RESPONSE OF
GALILEO INTERNATIONAL, L.L.C.**

Galileo International, L.L.C. ("Galileo") hereby responds to the Petition of Amadeus Global Travel Distribution, S.A. for Interpretation of CRS Rules, filed on June 24, 1999. Galileo strongly supports the position of Amadeus that the Department's computer reservations system ("CRS") rules should be interpreted to prohibit the practice of tying the availability of corporate discount fares to the use of a CRS affiliated with the airline offering the discounted fares. There is no question that such tying practices cause harm to competition and to consumers. Moreover, in part as a result of changing patterns in the distribution of airline transportation, the problem of tying of corporate discount fares to CRS usage has

become more significant in recent years. Galileo urges the Department to clarify that the current CRS rules prohibit such tying practices or, in the alternative, to modify the CRS rules to ensure that such practices are prohibited explicitly.

Galileo moves for leave to file this response. Acceptance of this response will provide the Department with a more complete record on which to base its decision. Moreover, consideration of the response will not cause prejudice to any party.

DISCUSSION

On June 24, 1999, Amadeus filed its petition asking the Department to interpret its existing CRS rules, 14 C.F.R. Pt. 255, to prohibit the practice by certain airlines of tying the availability of corporate discount fares to CRS usage. In the alternative, Amadeus urges the Department to institute a rulemaking proceeding to revise the rules to make clear that such conduct is prohibited.

Galileo strongly supports the Amadeus petition.'

¹ In its comments on the Department's 1997 advance notice of proposed rulemaking in connection with sunset of the current CRS rules, Galileo urged that the Department clarify that carriers' practices of tying airline benefits to choice of a CRS will not be tolerated, or modify the existing rules so that they unequivocally prohibit carriers from tying such benefits to use of a particular CRS. Comments of Galileo International, L.L.C. in Response to Advance Notice of Proposed Rulemaking, Docket No. OST-97-2881, Dec. 11, 1997, at 41. Galileo continues to believe that tying of any form of airline benefit to CRS usage distorts competition and deprives both travel agents and corporate accounts of the ability to choose the CRS that best fits their needs.

The practice of tying availability of corporate discount fares to CRS usage is clearly anticompetitive and should be banned. In issuing revised CRS rules in 1992, the Department stated that:

“a vendor’s tactic of telling businesses that certain discount fares may be obtained only through its subscribers could be an effective means of using a dominant share of the local airline market as a tool for obtaining a larger share of the local CRS market.”²

More broadly, the Department observed that “the tying of . . . marketing benefits to . . . CRS subscription distorts competition in both the airline and CRS industries” and that such tying “is a competitive abuse.”³ Such tying arrangements deter CRS subscribers from choosing the system that is best suited to their needs. In many cases, a subscriber cannot afford the economic penalties entailed in forgoing significant discounts offered by a system owner that dominates air transportation in the city in which the subscriber is located. Ultimately, consumers are harmed when the subscriber is unable to choose the CRS services it needs without losing the benefit of discounted fares.

Galileo agrees with Amadeus that the practice of tying corporate discount fares and CRS usage is sufficiently widespread that it should be prohibited

² 57 Fed. Reg. 43780, 43801 (1992).

³ *Id.* at. 43828. The Department explained that “a vendor’s threat to deny [airline marketing] benefits to an agency can effectively coerce the agency into subscribing to the vendor’s system if that vendor is a major carrier in the agency’s city. ” *Id.*

without delay. Galileo sales personnel have reported a number of instances in which travel agencies and corporate accounts have declined to switch to, or have converted from, the Apollo system because they cannot afford to forgo a corporate air transportation discount representing hundreds of thousands of dollars.⁴

Galileo also agrees with Amadeus that the current CRS rules may be interpreted to prohibit tying of corporate fare discounts to CRS usage in the case of travel agency subscribers. In particular, 14 C.F.R. § 255.8(c), which states that "[n]o system owner may require use of its system by the subscriber in any sale of its air transportation services," appears plainly broad enough to reach tying of discount fares and CRS usage. The Department should clarify that this rule prohibits such conduct.

Alternatively, the Department should propose a new rule that would explicitly prohibit tying of corporate fare discounts to use of a CRS owned by, or under common control with, the airline offering the discounted fares. Due to the importance of the problem, tying of corporate discount fares to CRS usage is clearly an area in which prompt action is needed.

⁴ Within the past year Galileo has employed its own sales force, rather than using sales personnel of its current and previous airline owners, to market its Apollo system. As a result, Galileo has received more direct reports from consumers affected by CRS marketing practices.

Galileo's percentage of airline ownership has continued to decrease during the past few years. Galileo went public in July 1997. At the present time, Galileo is approximately 75 percent publicly owned and controlled.

This problem has become more significant in recent years, in part because of changing patterns in air travel distribution, Airlines have intensified their direct marketing to corporations in an effort to avoid paying travel agency commissions, so that corporate fare discount arrangements are more common than they were in 1992, when the Commission last engaged in a comprehensive review of its CRS rules. In addition, as travel agencies have imposed fees in response to airline commission caps, some corporations are choosing to self-provide airline distribution services.⁵ Corporate accounts are, if anything, more vulnerable to tying practices than traditional travel agencies. For example, a corporation with headquarters in Dallas has virtually no opportunity to switch from Sabre to Apollo if American Airlines threatens to withdraw significant fare discounts the corporation depends on for employee travel?

A prohibition on tying of corporate fare discounts and CRS usage would benefit CRS subscribers, which would be able to choose the CRS that best fits their needs while retaining for corporate customers the benefit of important air transportation discounts. Such a prohibition would also create a more level playing field for CRS vendors. A vendor such as Galileo, which has a high percentage of

⁵ Some corporations have obtained accreditation from the Airlines Reporting Corporation, allowing them to perform travel agency functions.

⁶ Dallas is by no means the only city for which problems have been reported. Based on the reports of Galileo personnel, tying of corporate discount arrangements and CRS usage occurs at many hub cities at which an airline with a dominant share of air transportation owns, or is under common control with, a CRS.

public ownership, is not in a position to tie airline benefits to CRS usage. However, vendors such as Sabre and Worldspan can and do wield this anticompetitive tool to retain CRS business. These vendors can deny business to Galileo by threatening to terminate substantial corporate fare discounts if a travel agency or corporation chooses to switch to Apollo. Ultimately, consumers will benefit if this anticompetitive practice is ended.

Despite its recognition that such arrangements are anticompetitive, the Department in 1992 chose not to impose a broad prohibition on tying of airline marketing benefits to CRS usage, based primarily on the concern that such a prohibition would be difficult to enforce.⁷ However, a ban on the tying of corporate fare discount arrangements and CRS usage should be no more difficult to enforce than the existing ban on tying of airline commissions and CRS usage. While parties to a tying arrangement may generally be reluctant to report these practices, a travel agency or corporation that wishes to switch CRSs, or the CRS vendor that seeks that business, may be willing to register a formal or informal complaint with the Department. In some cases the Department may be able to obtain documents that explicitly reveal a tying arrangement; it may also be possible to obtain evidence of

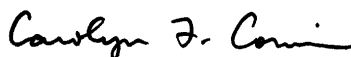
⁷ See 57 Fed. Reg. 43801, 43828.

tying by reviewing the economics of a CRS contract. In any event, even if few complaints are brought to the Department, the existence of an explicit prohibition on the tying of corporate fare discounts and CRS usage should help subscribers to resist pressure by CRS vendors to enter into these arrangements and deter vendors from engaging in such practices.

CONCLUSION

The Department should make clear that the current CRS rules prohibit the practice of tying the availability of corporate discount fares to use of a CRS owned by, or under common control with, the airline offering the discounted fares. Alternatively, the Department should issue a proposed rule explicitly banning this practice.

Respectfully submitted,



ANTHONY C. SWANAGAN
Senior Vice President and
General Counsel
CATHY L. CUPP
Senior Counsel and Legal Director –
International
THOMAS J. DEMAY
Regulatory Affairs Counsel

Galileo International, L.L.C.
9700 West Higgins Road
Rosemont, Illinois 60018
847-5 18-4800


CAROLYN F. CORWIN
Covington & Burling
1201 Pennsylvania Avenue, N.W.
P. O. Box 7566
Washington, D.C. 20044
202-662-6000

Counsel for
Galileo International, L.L.C.

September 10, 1999

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of September, 1999, I caused copies of the foregoing Motion for Leave to File and Response of Galileo International, L.L.C. to be sent by first class mail, postage prepaid, to those named on the attached service list.



Carolyn F. Corwin

**SERVICE LIST – Dockets Nos. OST-97-2881, OST-99-5888
(8/1 6199)**

David H. Coburn
Carol R. Gosain
Steptoe & Johnson LLP
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036

D. Scott Yohe
Senior Vice President –
Government Affairs
Delta Air Lines, Inc.
1275 K Street, N.W.
Washington, D.C. 20005

Douglas R. Abramson
Dara S. Redler
Worldspan, L.P.
300 Galleria Parkway
Atlanta, GA 30339

Rebecca G. Cox
Vice President, Government Affairs
Continental Airlines, Inc.
1350 Eye Street, N.W.
Washington, D.C. 20005

Hershel I. Kamen
Staff Vice President, International &
Regulatory Affairs
Continental Airlines, Inc.
P. O. Box 4607 – HQSGV
Houston, TX 7721 O-4607

Robert E. Cohn
Shaw Pittman
2300 N Street, N.W.
Washington, D.C. 20037

John Varley
Assistant General Counsel
Delta Air Lines, Inc.
Law Department #986
1030 Delta Boulevard
Atlanta, Georgia 30320

Charles J. Simpson, Jr.
David Heffernan
Zuckert, Scoutt & Rasenberger, L.L.P.
888 – 17th Street, N.W.
Suite 600
Washington, D.C. 20006

R. Bruce Keiner, Jr.
Lorraine B. Halloway
Thomas Newton Bolling
Crowell & Moring LLP
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2595

Tomas Lopez Fernebrand
Vice President, General Counsel &
Corporate Secretary
Amadeus Global Travel Distribution,
S.A.
Salvador de Madariaga, 1
28027 Madrid
Spain